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SPOUSES IN WILLS: A DIACHRONIC SURVEY (III BC–IV AD)*

GREEK DEEDS OF LAST WILL from Ptolemaic and Roman Egypt (III BC – AD IV) commonly open with a clause bequeathing to certain persons some share of the estate, hereinafter 'the beneficiary clause'. This is the case in Roman wills and in Greek *diathêkai* and *meriteiai*, a type of hereditary instrument that was in use in the Arsinoite hinterland during the early Roman period.[1]

Most beneficiary clauses convey the estate to the testator's closest next-of-kin: sons, if available, are considered throughout the Ptolemaic and Roman periods; daughters likewise, primarily if they have not been given a dowry at marriage.[2] As to spouses, on the other hand, we observe a seemingly drastic change between the early Ptolemaic period and the early

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[1] H. KRELLER, *Erbrechtliche Untersuchungen auf Grund der gräko-ägyptischen Papyrusurkunden*, Leipzig 1919, pp. 237–245, 313–342; Orsolina MONTEVECCHI, 'Ricerche di sociologia nei documenti dell'Egitto greco-romano I. I testamtenti', *Aegyptus* 15 (1935), pp. 67–121 at 67–74; U. YIFTACH, 'Deeds of Last Will in Graeco-Roman Egypt: A Case Study in Regionalism', *BASP* 39 (2002), pp. 149–164 at pp. 149–155.

[2] Most commonly cited in support of this rule is *P. Enteux.* 9.8 from 218 BC Krokodilopolis. Cf., *e.g.*, E. SEIDL, *Ptolemäische Rechtsgeschichte*, Glückstadt – Hamburg – New York 1962 (2nd ed.), p. 183. A married, or formerly married daughter does, however, occasionally

Roman. Among the wills of Greek settlers in the Arsinoitês from 238 to 225 BC, as reedited by Willy Clarysse as *P. Petr.*[2] I in 1991, wives are made beneficiaries of their husbands in 13 or 14 cases,[3] that is more frequently than their sons (6–11 occurrences)[4] or daughters (8).[5] The picture changes drastically in the Roman period. While sons and daughters are still commonly appointed beneficiaries, wives are not: among the roughly 90 Roman cases (I–IV cent. AD) in which the identity of the beneficiary can be established, it is a spouse in no more than four, compared with 50 in which it is a son, and 29 where the beneficiary is the testator's daughter.[6]

The peculiarity of the wife's position in the Petrie wills was clearly recognized as early as 1919 by H. Kreller. The German scholar suggested that this diversity may reflect a superior material position of the 'Petrie wives', since, unlike most other wives in wills, they may have been made *heirs to the family estate, to the real-estate*.[7] Willy Clarysse was more cautious. He pointed out that in *P. Petr.*[2] I 25.8–38 – virtually the only Petrie will in which the exact position of the wife is elaborated – the wife *receives merely the*

take part of the estate: cf., *e.g.*, *P. Köln* III 100.10–12 = *SB* X 10500 = *SB* X 10756 (after 24 Aug. 133 AD – Oxyrhynchitês). Cf. also E. CHAMPLIN, *Final Judgments. Duty and Emotion in Roman Wills, 200 BC – AD 250*, Berkeley 1991, pp. 116–120.

[3] *P. Petr.*[2] I 2.31–45 (?); 4; 6.27–47; 13; 14; 15 (all from 238/7 BC); 16.12–40; 16.41–66; 16.67–94; 17.15–40; 17.41–49 (all from 236/5 BC); 22.1–14; 23 (both from 235/4 BC); 25.8–38 (226/5 BC).

[4] *P. Petr.*[2] I 1.87–98 (?); 2.31–44 (?) ; 3.64–95 (?); 6.1–26; 7 (?); 9.8–19; 13 (all from 238/7 BC); 16.96–122; 18; 19 (?) (all from 236/5 BC); 30 (late 3rd cent. BC).

[5] *P. Petr.*[2] I 1–31; 7; 14 (all from 238/7 BC); 16.67–94; 20 (both from 236/5 BC); 22.1–14 (235/4 BC); 25.8–38; 28 (both from 226/5 BC).

[6] *P. Col.* VII 188.2–7 = *SB* XII 11042 (AD 320 – Karanis); *P. Münch.* III 80.6–28 (AD 103–114 – Soknopaiou Nêsos); *P. Oxy.* LII 3692.2–5 = *ChLA* XLVII 1424 (2nd cent. AD – Oxyrhynchos); *P. Vind. Tand.* 27.2 (1st cent. AD – Soknopaiou Nêsos). In the joint will *P. Oxy.* III 493 = *MChr.* 307 (before AD 99) it is not clear if the surviving spouse received his share by the beneficiary, or the usufruct clause. The document has been recently discussed by Eva JÁKAB (*infra* n. 43). In *P. Ryl.* II 153.39–43 (AD 169 – Hermopolis) the wife is a substitute heir. Figures for sons and daughters are based on a computerized databank of wills whose creation has been sponsored by the *Israeli Scientific Foundation*, that will soon be accessible on the internet. Cf. KRELLER, *Erbrechtliche Untersuchungen* (cit. n. 1) 141 ff.; MONTEVECCHI, 'Ricerche di sociologia' (cit. n. 1), pp. 100–105; YIFTACH, 'Deeds of Last Will' (cit. n. 1), p. 154 n. 15.

[7] KRELLER, *Erbrechtliche Untersuchungen* (cit. n. 1), p. 177: 'Erbin des eigentlichen Familiengutes, der Liegenschaften'.

right to κυριεύειν the inheritance, on condition that she will provide for the maintenance of the children, without being able to alienate it or – one may add – to dispose of it by testamentary means. Clarysse surmises that similar conditions are possible in other wills where the wife is made beneficiary of her husband, but notes that the extant evidence is inadequate to affirm this conjecture.[8]

Clarysse's caution is well justified. Yet *P. Petr.*[2] I 25.8–38 is not the only Ptolemaic document in which a wife is made beneficiary of her dead husband as a means of enabling her to manage the estate for their joint children. Whenever wives (or spouses in general) are appointed beneficiaries in the Ptolemaic period, and we know anything of the purpose of that appointment, guardianship of underage children is a major, and sometimes even exclusive incentive.[9] If guardianship was an incentive for making the wife a beneficiary in other Ptolemaic wills as well, the difference between the widow's position in the Petrie wills and in their early Roman counterparts may not be as substantial as might be assumed *prima facie*, for widows are commonly made guardians in Roman wills also, only by other means. The change, I maintain, is not in the widow's actual position but in the clauses by which it is created.

In the Petrie wills, wives are commonly considered in connection with the existence of common children. This is certainly the case in seven documents,[10] while only four do not mention common children at all.[11] Among these seven wills, in six the testator declares: *ἐάν τι πάθω ἀνθρώπινον, καταλείπω τὰ ὑπάρχοντά μοι πάντα τῆι ἐμαυτοῦ γυναικὶ καὶ τοῖς παιδίοις τοῖς ἐξ αὐτῆς*.[12] Five of the testators do not trouble to elaborate the exact

[8] *P. Petr.*[2] I, p. 34.

[9] This statement does not mean, of course, that the wife would never receive a permanent title on a concerte share of the estate. This is certainly the case, for example, in *P. Petr.*[2] I 13.10–14 (138/137 BC – Arsinoites).

[10] *P. Petr.*[2] I 3, 8–38; 4; 14 (all from 238/7 BC); 16.67–94; 17.15–40 (both from 236/5 BC); 22.1–14 (235/4 BC); 25.8–38 (226/5 BC).

[11] *P. Petr.*[2] I 6.28–47 (238/7 BC); 13; 16.13–40; 16.42–66 (all from 236/5 BC).

[12] *P. Petr.*[2] I 3.18–19; 4.6–10; 14.10–12 (all from 238/7 BC); 16.67–94 ll. 75–79; 17.15–40 ll. 23–25

position of the widow *vis-à-vis* the other beneficiaries. The sixth, the author of *P. Petr.*[2] I 25.9–38 (226/225 BC – Krokodilopolis), does.

The testator – [ ]ês, son of Philôn, is approximately 60 years old. He has four children from his wife Artemidôra: two sons, Aristokratês and Ptolemaios, and two daughters, Tet[ ] and Nikô. After his death, he provides, the estate should fall to the share of his wife and their children in common.[13] Next he empowers his wife to control (*κυριεύσει*) the estate,[14] but also makes clear that she will be prohibited from taking away or alienating any part of the bequeathed assets.[15] She will not be able to dispose of the estate by hereditary means either, for the will regulates its devolution upon the children after her death.[16] So Artemidôra's ***kyrieia*** does not intimate a permanent title to the estate or any of its elements. What then was the nature of the ***kyrieia***, and why was it accorded to Artemidôra?

At the time the will is composed Tet[ ] and Nikos, the couple's daughters, are not yet married, and may not have reached a marriageable age.[17] The four children are also termed *παιδία* – *young children*.[18] Therefore, when the testator accords his wife the ***kyrieia*** he does so – at least according to Clarysse's restoration – ***on condition*** (*ἐφ' ᾧι*) that she support these underage children.[19] This may have been a major incentive for placing the

(both from 236/5 BC); 25.8–38 ll. 16–18 (226/5 BC). The exact formulation varies in each case according to the particular circumstances.

[13] *P. Petr.*[2] I 25.8–38 ll. 15–18: *εἴη μέν [μοι ὑγιαίνοντι αὐτὸν τ]ὰ ἐμαυτοῦ διοικε̣[ῖν. ἐὰν δέ τι πάθω] | ἀνθρώπινον καὶ τελευτ[ήσω τὸν βίον, καταλείπω] τὰ ὑπάρχοντά [μοι πάντα τῆι] | γυναικί μου Ἀρτεμιδ[ώραι ± 19 καὶ] τοῖς παιδίοις [τοῖς ἐξ αὐτῆς] | Ἀριστοκ[ράτ]ηι καὶ Πτο̣λεμ[αίωι καὶ Τετ. . . καὶ Νικο]ῖ.*

[14] *P. Petr.*[2] I 25.8–38 ll. 18–21: *κυριεύσει Ἀ̣ρ[τεμιδώρα τῶν] | ὑπαρχό̣[ντων. .[±24 ἐφ' ᾧι π]αρέξει το[ῖς παιδίοις τοῖς] | προγεγ[ραμ]μένοις τὰ̣ [δέοντα καὶ τὸν ἱμα]τισμὸν κα[ὶ ὅσα] καθήξ̣ε̣[ι αὐτοῖς κατὰ] | δύνα̣[μιν τῶ]ν ὑπ[α]ρχόντων [αὐτῆι].*

[15] *P. Petr.*[2] I 25.8–38 ll. 33–35: *καὶ [μ]ὴ ἐξέστω Ἀρ[τεμιδώραι] | [± 12 ἀπε]ν̣[ε̣]γκασθα[ι μηθὲν τῶν ὑπαρχόν]των μου μηδ' ἐξαλλ[οτριῶσαι] | [± 14 ἄ]κυρος ἔστω [- - .*

[16] *P. Petr.*[2] I 25.8–38 ll. 27–33.

[17] *I.e.*, in all probability, twelve. R. S. Bagnall & B. W. Frier, *The Demography of Roman Egypt*, Cambridge 1994, p. 112; U. Yiftach-Firanko, *Marriage and Marital Arrangements. A History of the Greek Marriage Document in Egypt. 4th century* BCE *– 4th century* CE, München 2003, p. 96.

[18] *LSJ*[9] *s.v. παιδίον* I (p. 1287); Preisigke, *WB* II *s.v.* (p. 221): 'Kind'.

[19] *Supra*, n. 14.

estate under her control in the first place. Accordingly, when the daughters get married, and are consequently to be provided for by their husbands, Artemidôra also loses her *kyrieia* on their shares.[20]

Yet providing for underage children was not the only purpose of Artemidôra's *kyrieia*, for she is *not* deprived of her sons' property even after they come of age. At some stage her elder son, Artistokratês, is to receive a vineyard[21] for which he is to remit an annual sum of money – perhaps an allowance to his mother.[22] Only after Artemidôra's death, however, will he acquire the rest. Ptolemaios, the youngest son, will not get anything as long as his mother is alive. [23] Clearly, the *kyrieia* is also meant to secure the widow's livelihood until death. So in *P. Petr.*[2] I 25.9–38 Artemidôra is made beneficiary for two purposes: to provide for the children and to secure her own living as a widow.[24]

Sometimes spouses are also made beneficiaries of each other in hereditary provisions within marriage documents.[25] An example is the case in *P. Gen.* I 21 = *P. Münch.* 62 = *MChr.* 284 (2nd cent. BC – unknown prove-

[20] This arrangement fits in perfectly with H.-J. WOLFF's concept of *kyrieia* as a real right accorded for a designated purpose, which ceases to exist once that purpose becomes unattainable. Cf., *e.g.*, H.-J. WOLFF, *Vorlesungen über Juristische Papyrologie*, Berlin 1998, p. 97; IDEM, 'La structure de l'obligation contractuelle en droit grec', *RHD* 44 (1966), pp. 569–583 at p. 580.

[21] *P. Petr.*[2] I 25.8–38 ll. 21–25: Ἀρ[ισ]τοκράτης δ[ὲ ±22] | ϵτ[. . . . .]σι λαμβανέτω τ[. . . . .]τ[± 34] | [. . περὶ Σϵ]βέν[ν]υτον τῆς Ἡρακλείδου μερίδ[ος τοῦ Ἀρσι]νοίτου νομοῦ ὧ[ν γείτονες] | [νότου . . . .]κ[. .], βορρᾶ δι̣ὼρυξ, ἀπηλιώτου Ὀνν̣ώφριος ἀμπελών, λιβὸς χέρσ̣ο̣ς .[. . . . .] | .[. . . . . ἐκ] τοῦ κοινοῦ τῶν βασιλικῶν κα̣τ̣.ν̣. . . .θ[. . .]των.

[22] *P. Petr.*[2] I 25.8–38 ll. 35–37: εἰσδιδότω δὲ Ἀ[ριστοκράτης] | [. . . . . τοῦ ἀμπελ]ῶνος ἀπὸ τ[± 14 - - εἰς ἔτη (?) π]έντε ⟨καθ' (read κατ') ἔτος⟩ χαλκοῦ νο̣[μίσματος] | [δραχμὰς ἑκατὸ]ν (?) ἀφ' οὗ ἂν ἔτ[ους - -

[23] *P. Petr.*[2] I 25.8–38 ll. 31–33: ἐγδοθειση̣ῶν δὲ τῶν θυγατέρω[ν] ἐάν τι πάθηι Ἀρτεμιδώρα | [. . . . . τοῦ ἡ]μίσους τοῦ ἀ̣[μπελ]ῶ̣ν̣ος ο̣ὗ καταλ⟨ϵ⟩ίπω Ἀριστοκράτηι, τὰ λοιπ[ὰ τῶν] | [ἐμαυτοῦ ὑ̣παρχόντ]ων Ἀριστ̣[οκράτηι καὶ Πτ]ολεμ̣[αίωι]

[24] Cf. H.-A. RUPPRECHT, 'Zum Ehegattenerbrecht nach den Papyri', *BASP* 22 (1985), pp. 291–295 at p. 293; IDEM, 'Die Sorge für die Älteren nach den Papyri', [in:] M. STOL & S. P. VLEEMING (edd.), *The Care of the Elderly in the Ancient Near East*, Leiden 1998, pp. 223–239 at p. 233; J.-U. KRAUSE, *Witwen und Waisen im römischen Reich.* II. *Wirtschaftliche und gesellschaftliche Stellung von Witwen*, Stuttgart 1994, pp. 75–104.

[25] G. HÄGE, *Ehegüterrechtliche Verhältnisse in den griechischen Papyri Ägyptens bis Diokletian*, Köln – Graz 1968, pp. 91–104, 171–176; YIFTACH-FIRANKO, *Marriage* (cit. n. 17) at pp. 221–229.

nance). In this papyrus the clause on the eventuality of the partners' death contains two sections, one pertinent if they have joint children (ll. 15–16) and the other if they do not (ll. 16–23). The former circumstance is treated in roughly the same manner as in *P. Petr.*[2] I 25.9–38. Here too the rule is: *ἔστω τὰ καταλειπόμενα ὑπάρχοντα | τοῦ ζῶντος αὐτῶν καὶ τῶν τέκνων τῶν ἐσομένων αὐτοῖς ἐξ ἀ[λ]λήλων*. In this case too the document does not elaborate the exact right of the surviving spouse to the estate of the deceased. We do know, however, that it depends on the existence of the joint children: if there are none, the wife or her family will simply get her dowry.[26] Actually we know more.

The clause discussing death without joint children states that the surviving spouse will have no right to the estate of the deceased even if they had children but they died before reaching puberty. This will be the case even if the children died after one of the partners passed away, that is, even after the surviving spouse has already become the 'owner' of the estate.[27] This abrupt termination of ownership after the death of the children, regardless of the well-being of the surviving spouse, indicates that in *P. Gen.* I 21, and in all other marriage documents that contain the same provision,[28] the spouse was to 'inherit' the estate solely for the purpose of providing for her children. Once this purpose became unachievable, he lost his title irrespective of his or her personal needs. In the marriage documents the welfare of the surviving spouse was secured by other means:

[26] *P. Gen.* I 21.16–22: *μὴ ὄντων | δ' αὐτοῖς τέκνων ἐξ ἀλλήλων ἢ καὶ γενομένων καὶ τούτων ἀπογενομένων πρὸ τοῦ | ἐν ἡλικίαι γενέσθαι ἤτοι ἀμφοτέρων περιόντων ἢ καὶ μετὰ τὴν ὁποτερουοῦν αὐτῶν | τελευτήν, ἐὰν μὲν Ἀρσινόη προτέρα τι πάθῃ, ἀποδότω Μενεκράτης τὴν φερνὴν πᾶσαν | Ὀλυμπι[ά]δι τῇι μητρὶ αὐτῆς, ἐὰν ζῇι, εἰ δὲ μή, τοῖς ἔγγιστα γένει οὖσι αὐτῆς Ἀρσινόης | [± 25]. . . [.]ϛ[.], ἐὰν δὲ μὴ ἀποδῶι, ἀποτεισάτω παραχρῆμα | [± 27]*.

[27] Cf. supra n. 26. The clause is treated in detail by S. G. Huwardas, *Beiträge zum griechischen und gräkoägyptischen Eherecht der Ptolemäer- und frühen Kaiserzeit*, Leipzig 1933, pp. 16–18.

[28] *P. Col.* VIII 227.20–27 (late 2nd–early 3rd cent. AD – unknown provenance); *P. Freib.* III 29.12–17 (178 BC –Philadelphia); 30.6-16 (179/8 BC – Philadelphia); *P. Gen.* I 21.14-21 = *MChr.* 284 = *P. Münch.* III 62 (2nd cent. BC – unknown provenance); *P. IFAO* III 5.9–17 (2nd cent. AD – Oxyrhynchitês); *P. Oxy.* II 265.27-37 (AD 81–96 – Oxyrhynchos); III 496.10–16 = *MChr.* 287 (AD 127 – Oxyrhynchos); 497.11–20 (early 2nd cent. AD – Oxyrhynchos); 604.13 *descriptum* = Yiftach-Firanko, *Marriage* (cit. n. 17), pp. 331–333 (early 2nd cent. AD – Oxyrhynchos); *PSI* V 450^{r}.1–6 (2nd cent. AD – Oxyrhynchos).

through his right to recover his own assets, which in the case of the wife was her dowry.[29]

Quite similar is the case in *SB* VI 9065 (50/49 BC – Hêrakleopolitês), our last Ptolemaic piece of evidence. This is an *enteuxis* submitted by Hêrakleia, daughter of Apollônios, against Alexandros, brother of her late husband Heliodôros, for the return of her dowry. In her plea Hêrakleia gives a detailed account of a will drawn up by Heliodôros. According to Hêrakleia, Heliodôros left her some of his estate, and did so by means of roughly the same formula that was used in the preceding cases: *κατέλιπέν μοι τὰ σεσημασμένα*.[30]

Hêrakleia also claims that in his will Heliodôros authorized her to manage the estate as she saw fit (*καθὼς ἐὰν προαιρῶμαι*). Yet her account of the wording of the will may be inaccurate in this respect, for in most known parallels, including *P. Petr.*[2] I 25.8–38, the wife's freedom of action falls short of the competence to alienate the estate and to act in any way that would diminish its size.[31] The arrangement is accounted for by the circumstances in which the will was composed. The couple had a joint underage daughter, Isidôra by name, and Hêrakleia's right to the estate was predicated on her existence: Heliodôros makes clear that should Isidôra die prematurely (as she eventually did), Hêrakleia will merely be entitled to retrieve her dowry.[32]

It is quite plausible, then, that Hêrakleia's position as manager of her daughter's estate as well as the formulaic means by which it was created, namely the beneficiary clause, were identical in *SB* VI 9065 and in *P. Petr.*[2] I

[29] Yiftach-Firanko, *Marriage* (cit. n. 17), pp. 222–224.

[30] *SB* VI 9065.5–8: *κατέλιπέν μοι τὰ σεσημαμμενα* (read *σεσημασμένα*) *διὰ ταύτης καὶ τῆς ἐξ ἀμφοτέρων | γενομένης θυγατρὸς Εἰσιδώρας ἐπίτροπον ἀνεγλόγιστον διοικοῦσα⟨ν⟩ ἕκαστα καθὼς ἐὰν προαιρῶμαι | μηδενὶ ἐξόντος τῶν πρὸς ὁποτέρου ἔγγιστα γένους προσεῖ[ναι τ]ῇι ἐπιτροπείᾳ μηδ' ἀπογρά|[ψασθαι.*

[31] *BGU* VII 1654.20 (after AD 133 – Ptolemais Euergetis) (?); *CPR* VI 1.12 (AD 125 – Arsinoitês); *P. Mich.* XVIII 785a.18 (AD 47/61 – Arsinoitês); *P. Petr.*[2] I 25.8–38 ll. 33–35 (226/5 BC – Krokodilopolis); *SB* VIII 9642 (4).12 (AD 117–137 – Tebtynis) (?); 9642 (6).13 (*ca.* AD 133 – Tebtynis) (?). Cf., however, deviating from this rule, *P. Oxy.* III 493.5–9 = *MChr.* 307 (before AD 99) and 494.18–21 = *MChr.* 305 = *Sel. Pap.* I 84 = *Jur. Pap.* 24 (AD 165, both from Oxyrhynchos).

[32] *SB* VI 9065.8–19.

25.8-38. But the purpose is somewhat different. In *P. Petr.*² I 25.8-38, we recall, Artemidôra's position as beneficiary was meant to allow her to provide for the children, but it was also supposed to warrant her own welfare. *SB* VI 9065, by contrast, is concerned for the children's welfare alone; the wife's own existence, especially after her daughter's death, is to be secured through the recovery of her dowry. As we saw earlier, this was also the case in *P. Gen.* I 21.

So in the Ptolemaic period leaving the estate to one's spouse was quite usual. In most cases the spouse received the estate in common with the joint children. Only in three of these cases can the purpose of the bequest be ascertained. In all three papyri the couple had joint underage children. In all three the position of beneficiary was to allow the widow to run the estate to their benefit. There was also the issue of the widow's own welfare, yet in two of the three cases – *P. Gen.* 21 and *SB* VI 9065 – this purpose was served not through an act of bequeathal of the husband's property but through the recovery of the dowry. If this was indeed the general rule,[33] it could be altered, as is the case in *P. Petr.*² I 25.9–38. In this will the marriage is long-standing, and the wife's dowry may well have been lost, dissipated, or absorbed into the husband's estate. It was therefore more practicable to provide for the wife not by returning her dowry, but by extending her control of her husband's estate beyond her children's puberty until her death.[34]

Providing for the wife is a major concern in other early Ptolemaic wills, yet the formulaic means for securing her well-being vary occasionally. In *P. Petr.*² I 3.64–95 the testator did not count his wife among his heirs in the beneficiary clause. Instead, he granted her in a special clause the right to dwell (*ἐνοικεῖν*) on some of his premises.[35] The Ptolemaic testator thereby foretold what was to become the most common way of treating one's spouse in the Roman period. Spouses feature in 30 deeds of last will from the Roman period down to the end of the fourth century AD. Yet four

[33] Which seems to be the case in view of the fact that this is a routine formula in Ptolemaic and early Roman marriage documents. Cf. *supra*, n. 28.

[34] KRAUSE, *Witwen und Waisen* (cit. n. 24), p. 66. The problem is also dealt with *inter vivos*. Cf. YIFTACH-FIRANKO, *Marriage* (cit. n. 17), p. 244.

[35] *P. Petr.*² I 3.64–95 ll. 77–78: [. . . . *Χαριτοῖ δὲ τ*]*ῆι ἐμῆ*[*ι γ*]*υναικὶ ἐξέστω ἐνοικεῖν* [± 14] | [. . . . . *ὅσα ϵ*]*ἶχεν Χα*[*ρι*]*τώ.*

alone follow the Ptolemaic practice of making them beneficiaries (cf. *supra*, n. 6). Most frequently, spouses are addressed in the Roman periodin a special clause that allows them to dwell on the testator's premises, to use its facilities, and occasionally also to live from the yield of land – hence the usufruct clause; this is the case in fifteen documents.[36]

The early Roman material thus reveals a drastic change in the way spouses are treated in wills. From this finding, we recall, H. Kreller conjectured a substantial difference in the wife's material position in the Petrie wills and in their early Roman counterparts (cf. *supra,* n. 7). Yet it may not be so. In most Ptolemaic cases, nine in all, the spouse is appointed heir alongside the joint children. Out of these nine, in the three cases that allow us a glimpse at the nature and purpose of that appointment the spouse is not made permanent owner of any specific part of the estate: ownership is ruled out, at least in the case of *P. Petr.*^{2} I 25.9–38, by a clause that prohibits an act of alienation on his part. The surviving spouse is granted the right to administer the estate for the joint children and, if he has no other source of income, also for himself. The picture provided by these three documents is uniform, so it is not fanciful to assume a similar rationale in most or all five cases (*supra,* n. 12) that do not elaborate the position of the surviving spouse.

Earlier, in the Roman period testators rarely make their spouses beneficiaries; instead, they provide for their future well-being in the usufruct clause. This, we recall, is the case in 15 documents. Breaking these

[36] *BGU* VII 1654 (after AD 133 – Ptolemais Euergetis); *CPR* VI 1 (AD 125 – Arsinoitês); *P. Köln* II 100 = *SB* X 10500 = *SB* X 10756 (after 24 Aug. 133 AD – Oxyrhynchitês); *P. Mich.* VII 439 = *CPL* 222 = *ChLA* V 301 (AD 147 – Oxyrhynchitês); XVIII 785 (AD 47/61 – Ptolemais Euergetis); *P. Oxy.* I 104 (AD 96); 105 = *MChr.* 303 (AD 118–138); III 489 (AD 117); 493 = *MChr.* 307 (before AD 99) (?); 494 = *MChr.* 305 = *Sel. Pap.* I 84 = *Jur. Pap.* 24 (AD 165 – all from Oxyrhynchos); *P. Stras.* VII 684 (AD 117–138 – Arsinoitês (?)); *P. Ups.Frid.* I (AD 48 – Dionysias); *P. Vind.Tand.* 27 (1st cent. AD – Soknopaiou Nêsos); *SB* VIII 9642 (4) (AD 117–137); 9642 (6) (*ca.* AD 133, both from Tebtynis), perhaps also in *P. Lond.* II 375 *descriptum* ll. 20–29 (p. XXXV) (before AD 148 – Ptolemais Euergetis), recently published by R. P. SALOMONS, 'Testamentaria', *ZPE* 156 (2006), pp. 217–241 at pp. 217–222. Cf. MONTEVECCHI, 'Ricerche di sociologia' (cit. n. 1), p. 100; CHAMPLIN, *Final Judgments* (cit. n. 2), p. 123; KRAUSE, *Witwen und Waisen* (cit. n. 24), pp. 90, 102.

down further, we find in six documents usufruct with no addition.[37] Nine more, in addition to another two without the usufruct clause, anticipate precisely the situation related in *P. Petr.*[2] I 25.8–38 many generations earlier: the administration of the estate for the testator's underage children.[38] This is the situation, for example, in *CPR* VI 1 from AD 125 Ptolemais Euergetis.

The testator, Ammônios son of Apiôn, has a wife and two underage children.[39] The children are made heirs of the estate, and the wife Aphroditous receives the chattels, as well as the right to dwell in her husband's house as long as she lives.[40] The same clause also deals with the issue of guardianship: Aphroditous is formally to share the management of the estate with Theôn, Ammônios' brother, who is to supervise (*ἐπακολουθοῦντος*) her activities. Aphroditous is to act, however, without an additional guardian (*ἀνεπιτρόπευτος*), and without being accountable (*ἀνεγλόγιστος*) regarding the administration of the assets.[41] She alone is to perform Ammônios' burial

[37] *P. Köln* II 100.24–26; *P. Oxy.* I 104.14–22; 105.4–6; III 489.5–12; *P. Ups.Frid.* 1.15–16; *P. Vind.Tand.* 27.14–15 (?).

[38] *BGU* VII 1654.10–20; *CPR* VI 1.8–16; *P. Mich.* VII 439.1–7; XVIII 785a.11–18; *P. Oxy.* III 493.2–9; 494.7–25; *P. Stras.* VII 684.20–22; *SB* VIII 9642 (4).8–14; 9642 (6).10–15. Probably also in *P. Lond.* II 375 *descriptum* ll. 24–26 (contra Salomons, *supra*, n. 36 p. 221 ad l. 18, who suggests that the clause deals with the guardianship over the wife. Such an arrangement is not attested, to my knowledge, in any contemporary will, nor is it likely in view of the evidence presented here. Not in the framework of the usufruct clause: *P. Diog.* 11.19–22 (AD 213 – Ptolemais Euergetis); *P. Oxy.* 907.16–21 = *MChr.* 317 = *FIRA* III 51 (AD 276 – Oxyrhynchitês).

[39] *CPR* VI 1.5–8. Further evidence of the age of the children of Aphroditous is provided by the marriage document of her daugher, *CPR* I 24 from AD 136. Since in that document the transacting party is the mother, at that time the daughter would have been in her teens. On this assumption, in the present document she is no more than ten years old, and possibly less than five. Cf. YIFTACH-FIRANKO, *Marriage* (cit. n. 17), pp. 273–275.

[40] *CPR* VI 1.8-10: *τῇ δὲ γυ||[ναικί] μο[υ Ἀ]φροδειτ[οὖτ]ι τὰ ὑπ' ἐ[μ]οῦ καταλειφθησόμενα ἐπίπλοα καὶ σκευὴ καὶ ἐνδομενείαν καὶ ἱματισμὸν ἡδὲ καὶ ἐνοίκη[σιν ἐφ' ὅσον χρόνο]ν περ[ίεστι καὶ ἄγαμος] | [καθ]ἑστηκεν τ[ῆς] κατα̣λειπομένης ὑπ' ἐμοῦ τοί̣[ς] τέκνοις ὡς πρόκειται οἰκίας καὶ αὐλῆς ἐπ' ἀ[μ]φόδου Βειθυνῶν [Ἀ]λλων Τ[όπων*

[41] *CPR* VI 1.10-17: *. . .]. . . .[τ]ὴν γυ[ναῖκά μου . . . . . .] | [ἐπί]τροπον κα. . . . στασιν τῶν ἐξ ἀλλήλων ἀφηλίκων τέκνων ἄχρὶ οὗ ἐν ἡλικίᾳ γένηται οὖσαν ἀν[επ]ιτρόπευτ[ον καὶ ἀ]νεγλόγιστ[ον ± 13] | [. . . . .]. .τητον κατὰ πάντα τρόπον οὐθὲν μέντοι ἁπλῶς ἐξαλλοτριοῦσαν οὐδὲ καταχρηματίζουσαν τῶν ἀνηκόντ[ων . . . .].κα. ἡδὲ πα.[± 15] | [. . . .]οις τοῖς τέκνοις παραδότω ἡ μήτηρ αὐτῶν Ἀφροδειτοῦς τὰ ὑπάρχοντα καθαρὰ ἀπὸ δημοσίων πάντων καὶ*

rites, and possibly also to purchase some objects for her children with an amount of money left for that purpose in a bank. Accordingly Aphroditous, not Theôn, is prohibited from alienating the estate–a prohibition imposed in *P. Petr.*[2] I 25.8–38 too, and she must hand it over to the children when they come of age. In short, Aphroditous is to run the estate alone.

In practice, then, the widow acquires the same rights and assumes the same responsibilities in both the Ptolemaic *P. Petr.*[2] I 25.8–38 and the Roman *CPR* VI 6. She is allowed to hold and use some of the estate as a means of securing her living as a widow. She is also entrusted with the management of the entire estate for the joint underage children until they reach puberty. Still, the formulaic means that create her position are markedly different in the two cases. In *P. Petr.*[2] I 25.3–38 Artemidôra's position derives from her ***kyrieia*** as established in the beneficiary clause. As we saw, she is by no means exceptional in this respect among her comtemporaries. In *CPR* VI 1 the same position is created in the usufruct clause, which in this case not only treats the wife's right to enjoy the fruits of her husband's estate, but also establishes her position as guardian. This is the case in the rest of the early Roman material as well.

Thus, at a certain point in the late Ptolemaic or early Roman period scribes changed the location within the will of the provision that establishes the competences of the widow: they stopped incorporating it in the beneficiary clause and started doing so in the usufruct clause. But when exactly did the change occur? The new practice appears for the same time ***in extensu*** in wills from the first century AD, yet it may have predated the Roman conquest. In *SB* VI 9065 from first-century BC Hêrakleopolitês the testator follows the Ptolemaic practice of entrusting his wife with the guardianship through the beneficiary clause (cf. ***supra***, n. 13). But unlike his

πάσης δ[απάνης]. . . [ἡ γ]υνὴ [ποιήσεται. . . .] | [. . . . .] τὴν κηδείαν μου καὶ καταςκαφὴν καὶ ἐνχώριον θεραπείαν εἰς ἣν ἀναλωσάτω{ι} ἀργυρίου δραχμὰς τετρακοσίας τῆι ἐ[ροσύν]ηι. . ἃς δὲ [ἔ]χω ἐν [θέματι ἐπὶ τῆς Πάππου] | [τραπ]έζης ἀρ[γυ]ρίου δ[ρα]χμὰς τρ{ε}ισχι[λί]ας διακοσίας βούλομαι κατατεθῆναι εἰς ἀγορασμὸν εὐάρεστον ἐπ' ὀνόματος τῶν [τέκνων γεν]ομένων μου [± 15] | [. . . . .]. . .[.].ν[. .].κ̣αὶ . . .[. . .]. ἐπ̣α̣κ̣ο̣λ̣ο̣υ̣θ̣οῦντος [πᾶ]σι τοῖς τῆι ἐπιτροπῆ ἀνηκοῦσι καὶ τῶι ἀγορασμῶι τοῦ ἀδ[ε]λφοῦ μ[ου] Θέ̣ω̣[νο]ς μόνου. ἐν δὲ οἷς ἐνοφ[ειλ]ο|[μένοις] ἐ̣στὶν καὶ δάν[ειο]ν τῆς μητρό[ς] μου Ἰσαροῦτος ἀργυρίου δραχμῶν χ{ε}ιλίων γενόμ[ε]νον κατὰ πίστιν ἐπ' ὀνόματος τοῦ ἀδελφοῦ μου Θέωνος.

predecessors he also names her *ἐπίτροπος ἀνεγλόγιστος*,[42] thus forecasting what was to become the wife's title as guardian in the Roman period. The change, then, whose outcomes are exhibited by the early Roman sources, was in fact already underway in the late Ptolemaic period.[43]

To sum up, spouses are commonly considered in wills from both Ptolemaic and Roman times. Yet the form of their consideration varies in the two periods. In Ptolemaic wills – most conspicuously among the Greek settlers in the late-third-century BC Arsinoitês – the wife is most frequently made beneficiary through the beneficiary clause. Not so in the Roman period. Now the most common strategy is to accord the wife in a special clause usufruct and guardianship of underage children, if such children exist. According to H. Kreller, this diversity may reflect a different, superior factual position of women in third-century BC Arsinoitês. I am not sure that it does.

In the Petrie wills the wife is frequently appointed beneficiary when there are joint children, and mostly together with them. Moreover, the three Ptolemaic cases that shed light on the wife's actual position as beneficiary along with the children convey a picture strikingly similar to that of most early Roman widows: she is made beneficiary in order to secure her living and to allow her to run the estate for the benefit of the joint underage children. If this were the case in other Ptolemaic instances of joint succession, we could claim that in practice nothing had changed between the Ptolemaic and the Roman period. In both eras spouses were usually endowed with usufruct and entrusted with guardianship of their children. What was changed were the formulaic means by which the widow gained her position: the beneficiary clause in the Ptolemaic period and the usufruct clause in the Roman.

[42] Cf. supra n. 30 and Orsolina MONTEVECCHI, '*Ἀνεκλόγιστος* – *Ἀνεπιτρόπευτος*', *Aegyptus* 77 (1997), pp. 43–52. The expression is also attested, in the first century BC, in *BGU* XIV 2374.3 (88–81 BC – Hêrakleopolitês).

[43] The Ptolemaic strategy was not abandoned, however, completely in the Roman period. Cf., perhaps, *P. Oxy.* III 493 = *MChr* 307 (before AD 99) and Eva JÁKAB, 'Berenike vor Gericht. Apokeryxis, Gesellschaft und Buchführung in *P. Oxy.* XXII 2342', *Tyche* 16 (2001) pp. 63–85 at pp. 68–72. In fact, it is well attested in contemporaneous Roman jurisprudential sources: cf. CHAMPLIN, *Final Judgments* (cit. n. 2), pp. 109–110; KRAUSE, *Witwen und Waisen* (cit. n. 24), p. 92.

Two explanations can be made for the change – both no more than hypotheses. As the foregoing discussion has shown, those made beneficiaries in Ptolemaic wills did not necessarily receive permanent, unlimited and unconditional title on the testator's death. The wife was made beneficiary, but her title was limited, for she was not allowed to alienate the assets *inter vivos* or (probably) by will. Moreover, at least in some cases, her title was also conditional, for she was to hold the property only as long as the children were alive. Things changed in the Roman period, as the beneficiary clause was now used exclusively for conveying permanent title.[44] Since the wife was not normally granted such a title, there was little room for her consideration within the newly modified beneficiary clause.

The other explanation relates to the wife's position as guardian. Death of parents to underage children is an extremely common phenomenon in Antiquity.[45] It caused the incorporation in wills of clauses anticipating the question of guardianship of these children until they come of age. It was most natural to appoint the wife as guardian, yet in the classical periodshe was generally incapable of acting as such.[46] In Ptolemaic Egypt the legal impediments cease to exist, yet the old conventions still linger in the testators' minds:[47] the third century BC Artemidôra is made guardian in every

[44] A change that is manifested in a new formulation of the beneficiary clause. In some early Roman wills the beneficiary clause no longer aims at according beneficiaries some right to the estate, as its Ptolemaic predecessors did (*i.e.* καταλείπω τὰ ὑπάρχοντα τῷ δεῖνι, but at establishing the identity κληρονόμος: καταλείπω δεῖνα κληρονόμον (cf., *e.g.*, *P. Oxy.* I 105.5 = *MChr.* 303 [AD 118–138 – Oxyrhynchos]). Is the clause assimilated to the Roman *heredis institutio*? Cf., strongly reserved, KRELLER, *Erbrechtliche Untersuchungen* (cit. n. 1), pp. 346–347.

[45] BAGNALL & FRIER, *Demography* (cit. n. 17), pp. 123, 125; CHAMPLIN, *Final Judgments* (cit. n. 2), pp. 105–106; J.-U. KRAUSE, *Witwen und Waisen im römischen Reich* III. *Rechtliche und soziale Stellung von Waisen*, Stuttgart 1995, pp. 4–10.

[46] Cf. A. R. W. HARRISON, *The Law of Athens* I, Oxford 1968, p. 100. Even here, however, this was not a rule without exceptions. Cf. *SIG*^{3} 1014.11–125 and D. M. SCHAPS, *Economic Rights of Women in Ancient Greece*, Edinburgh 1979, p. 51. For Rome, cf. M. KASER, *Römisches Privatrecht* I. *Das altrömische, das vorklassische und klassische Recht* Münichen 1971 (2nd ed.), pp. 88, 353. Roman legal sources gradually allow women to act as guardians as well, a process that goes back to the practices studied here and culminates in the legislation of the post-classical period. Cf. M. KASER, *Römisches Privatrecht* II. *Die nachklassischen Entwicklungen*, München 1975 (2nd ed.), pp. 227–228.

[47] Cf., *e.g.*, WOLFF, *Vorlesungen* (cit. n. 20), p. 76.

practical sense save the title ἐπίτροπος.[48] By the first century BC, and still more so in the Roman period, the old conventions are overcome. The wife's guardianship needs no longer be disguised in the beneficiary clause as some kind of *kyrieia*. She is now openly termed ἐπίτροπος, and is established as such in an independent clause.[49]

In fact, the two explanations share a common background. Ptolemaic wills establish as beneficiary anyone who gains some right to the estate; in the Roman period it has to be ownership. The Ptolemaic widow could be entrusted with guardianship simply by being made beneficiary together with the children; in the Roman period she has to be termed ἐπίτροπος. Both explanations show then an ongoing tendency towards a sharper definition of legal terms by the end of the Ptolemaic and the beginning of the Roman period. This process, which also manifests itself in respect of the Greek dotal system,[50] should be studied in a much broader context. For now, one positive result will do. Changes in the scheme of legal documents may well sometimes point to substantial changes in the legal institution they record; but they may also 'merely' reflect changes in the formulaic means denoting an institution that remains essentially the same. This, I maintain, was the case with the widow's position regarding the estate of her deceased husband. This *caveat* should be kept in mind as we study the evolution of legal documents from Ptolemaic, Roman and Byzantine Egypt.

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[48] It may thus not be merely by chance that in a second-century BC (!) appeal to an *archisômatophylax* for the completion of the exchange of *klêroi* (*SB* XVI 12720, before 25 July 142 BC – Arsinoitês) the mother of an orphan, presumably underage petitioner is not termed ἐπίτροπος but πρόστατις. The formal designation, then, is avoided in this papyrus as well. Cf. Orsolina Montevecchi, 'Una donna "*prostatís*" del figlio minorenne in un papiro del II^{a}', *Aegyptus* 61 (1981), pp. 103–115 especially at 108.

[49] The routine formula is used in *CPR* VI 1. cf. *supra* ft. 41.

[50] YIFTACH-FIRANKO, *Marriage* (cit. n. 17), pp. 175–182.